

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANE KAY WOOLERY,)	
)	CASE NO. C12-1980-JCC-MAT
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	RE: SOCIAL SECURITY DISABILITY
CAROLYN W. COLVIN, Acting)	APPEAL
Commissioner of Social Security, ¹)	
)	
Defendant.)	

Plaintiff Diane Kay Woolery proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be REMANDED for further administrative

¹ Carolyn W. Colvin, Acting Commissioner of Social Security, is substituted as defendant in this suit. Fed. R. Civ. P. 25(d)(1).

01 proceedings.

02 **FACTS AND PROCEDURAL HISTORY**

03 Plaintiff was born on XXXX, 1963.² She attended school through the eighth grade
04 (AR 294, 311) and previously worked as a cook, motel cleaner, cocktail waitress, and sandwich
05 maker (AR 39, 69, 294).

06 Plaintiff filed applications for SSI and DIB in August 2010, alleging disability since
07 February 1, 2010. (AR 253-66.) Her applications were denied initially and on
08 reconsideration, and she timely requested a hearing.

09 ALJ Glenn G. Meyers held a hearing on April 19, 2012, taking testimony from plaintiff
10 and a vocational expert (VE). (AR 47-80.) On May 10, 2012, the ALJ rendered a decision
11 finding plaintiff not disabled. (AR 30-41.)

12 Plaintiff again timely appealed. The Appeals Council denied plaintiff's request for
13 review on September 27, 2012 (AR 1-3), making the ALJ's decision the final decision of the
14 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

15 **JURISDICTION**

16 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

17 **DISCUSSION**

18 The Commissioner follows a five-step sequential evaluation process for determining
19 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
20 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had

21
22 ² Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of
Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case
Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 not engaged in substantial gainful activity since February 1, 2010, the alleged onset date.

02 At step two, it must be determined whether a claimant suffers from a severe impairment.
03 The ALJ found plaintiff's rheumatoid arthritis, osteoarthritis, a major depressive disorder,
04 anxiety disorder, and alcohol abuse severe. Step three asks whether a claimant's impairments
05 meet or equal a listed impairment. The ALJ found plaintiff's impairments did not meet or
06 equal the criteria of a listed impairment.

07 If a claimant's impairments do not meet or equal a listing, the Commissioner must
08 assess residual functional capacity (RFC) and determine at step four whether the claimant has
09 demonstrated an inability to perform past relevant work. The ALJ found plaintiff had the RFC
10 to perform light work, except that she can use her hands occasionally and can perform simple,
11 repetitive tasks. With that RFC, the ALJ found plaintiff unable to perform any past relevant
12 work.

13 If a claimant demonstrates an inability to perform past relevant work or has no past
14 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the
15 claimant retains the capacity to make an adjustment to work that exists in significant levels in
16 the national economy. With consideration of the Medical-Vocational Guidelines and the
17 testimony of the VE, the ALJ found that plaintiff could perform other work, such as an usher and
18 call-out operator. The ALJ, therefore, concluded plaintiff was not under a disability from
19 February 1, 2010 through the date of the decision.

20 This Court's review of the ALJ's decision is limited to whether the decision is in
21 accordance with the law and the findings supported by substantial evidence in the record as a
22 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means

more than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

Plaintiff argues the ALJ erred in assessing the degree of her functional limitations at step two, and in failing to include a social limitation in the RFC or hypothetical proffered to the VE. She requests remand for an award of benefits or, in the alternative, for further administrative proceedings.³ The Commissioner argues the ALJ's decision is supported by substantial evidence and should be affirmed.

Functional Limitations Assessment

Upon identification of a colorable claim of mental impairment, an ALJ must apply a "special technique[.]" 20 C.F.R. §§ 404.1520a(a), 416.920a(a); *Gutierrez v. Apfel*, 199 F.3d 1048, 1051 (9th Cir. 2002); and *Keyser v. Comm'r, Soc. Sec. Admin.*, 648 F.3d 721, 725-26 (9th Cir. 2011). An ALJ's decision must include a specific finding as to the degree of mental limitation in each of four broad functional areas: activities of daily living; social functioning; concentration, persistence and pace; and episodes of decompensation. §§ 404.1520a(c), (e); 416.920a(c), (e).

///

³ The Court takes note of a number of errors in the briefing submitted by counsel for plaintiff. For example, neither the Opening Brief, nor the Reply brief contained a title or noting date, as is required by Local Civil Rule 7(b)(1). Counsel also failed to include the correct name of the undersigned. The Court advises counsel to take greater care in her submission of briefing to this Court.

01 A. Daily Activities

02 Plaintiff first argues the ALJ erred in assessing only a mild restriction in activities of
03 daily living. The ALJ explained this finding as follows: “For example, the claimant is able to
04 attend to personal care and prepare simple meals[.]” (AR 33 (citing AR 556, 594).)

05 Plaintiff contends the cited record from Dr. Jeff Teal does not support a finding of only
06 mild limitation. Dr. Teal stated:

07 She does some reading, and she does cooking, shopping, and cleaning on a
08 paced basis depending on her physical condition. She reports that she is
09 usually independent in all instrumental activities of daily living, but that she has
arthritis flare ups she needs assistance with getting her clothing on and off and
occasionally with personal care.

10 (AR 556.) Plaintiff avers that the ALJ failed to account for the increased limitations during her
11 rheumatoid arthritis flares, noting that both sustainability of function and the ability to
12 undertake activities independently are considerations in the functional limitation assessment.
13 §§ 404. 1520a(c)(1), 416.920a(c)(1).

14 Plaintiff also challenges the reliance on a record from Dr. Steven Johansen, who noted
15 she is able to maintain personal hygiene independently, prepare simple meals, and perform
16 common household chores, and appeared capable of managing her finances without assistance.
17 (AR 594.) Plaintiff argues that, when viewed in the context of his entire opinion and the record
18 as a whole, this evidence only lends a mere scintilla of support for the ALJ’s determination.
19 She points to her own reports and testimony as to her limitations (AR 61-65, 317-22), and
20 observations in medical providers’ reports as to her difficulty with activities of daily living
21 during arthritis flare ups, as well as panic attacks while driving or riding in a vehicle (AR
22 377-78, 431, 479, 556, 671). (*See also* AR 594 (Dr. Johansen also found marked limitations in

01 other areas, and stated plaintiff's prognosis was guarded due to her physical limitations and
02 persistent pain).)

03 In addition to the report from Dr. Johansen and the observations of Dr. Teal, the record
04 contained an opinion from State agency reviewing physician Dr. Beth Fitterer finding plaintiff
05 had only a mild restriction in activities of daily living, an opinion later affirmed by Dr. Steven
06 Gardner. (AR 90, 116.) It is not accurate, therefore, to state that the record contained only a
07 scintilla of evidence supporting the ALJ's finding.

08 Also, the ALJ provided a number of reasons for not finding plaintiff fully credible,
09 including a lack of objective support, inconsistent objective evidence, evidence of
10 improvement with medication management and increased symptoms at least in part secondary
11 to no treatment, inconsistent statements regarding alcohol use, and inconsistent statements as to
12 why plaintiff stopped working. (AR 35-37.) Plaintiff does not challenge the ALJ's
13 credibility finding, and her reliance on her own statements and testimony is not compelling in
14 light of the clear and convincing reasons provided for finding her less than fully credible.

15 In sum, considering the medical opinion evidence and the ALJ's credibility finding,
16 plaintiff fails to demonstrate reversible error in relation to the daily activities finding. The
17 ALJ's conclusion has the support of substantial evidence.

18 B. Social Functioning

19 Plaintiff also asserts error in the assessment of only mild difficulties in social
20 functioning. The ALJ followed up this finding as follows: "For example, the claimant was
21 consistently cooperative on multiple mental evaluations and during treatment[.]" (*Id.* (citing
22 AR 550-63, 378, 600, 609, 612, 614).)

01 While conceding that the record supports she was generally cooperative during
02 evaluations and treatment, plaintiff avers the record does not support she is capable of
03 appropriate conduct with the public. She notes a long-standing history of anxiety problems,
04 occurring often when she drives or rides in a vehicle (*see, e.g.*, 366, 377, 431, 479, 556, 593),
05 and that all of the medical evaluators in the record support some sort of social functioning
06 limitation (*see* AR 90, 94 (Dr. Fitterer), AR 120, 129 (Dr. Gardner), AR 552 (Dr. Teal), and AR
07 594 (Dr. Johansen)). Plaintiff maintains the ALJ's determination rests on a mere scintilla of
08 evidence and, therefore, cannot be upheld.

09 The Commissioner argues the ALJ's finding was sufficient given the observation as to
10 plaintiff's behavior during evaluations and treatment, and also points to the ALJ's credibility
11 findings. Because this issue is tied closely to plaintiff's challenge to the ALJ's consideration
12 of the medical evidence and RFC assessment, it is discussed below.

13 Medical Evidence, RFC Assessment, and VE Hypothetical

14 As plaintiff observes, the record contains opinion evidence supporting a limitation in
15 plaintiff's social functioning, specifically in relation to public contact. Plaintiff argues the
16 ALJ erred in rejecting such evidence, and in failing to include a related limitation in the RFC
17 assessment and hypothetical proffered to the VE. Plaintiff stresses the relevance of this issue
18 given the VE's testimony that there would not be jobs in the national or regional economy a
19 person could perform with the combination of a limitation to only occasional use of the hands
20 and an inability to have contact with the public. (AR 69-70.) An analysis of this issue first
21 requires consideration of the medical opinion evidence.

22 In considering plaintiff's impairments at steps two and three, Drs. Fitterer and Gardner

01 assessed a moderate limitation in social functioning. (AR 90, 116.) The explanation included
02 that plaintiff's "anxiety reported to be minimal with medication management[.]" that overall
03 findings on examination "indicates only mild limitations, but she is likely to intermittently have
04 difficulties with sustain [sic] attention and pace due to subjective experience of pain[.]" and that
05 "[s]ocially, she can be expected to interact appropriately with others on a superficial level[.]"
06 and plaintiff "is capable of productive employment." (*Id.*) In assessing plaintiff's RFC, Drs.
07 Fitterer and Gardner found plaintiff moderately limited in interacting appropriately with the
08 public and getting along with coworkers or peers without distracting them or exhibiting
09 behavioral extremes, with the following narrative explanation: "Subjective experience of pain
10 and intermittent psychological issues with [sic] periodically affect ability to relate appropriately
11 with general public and coworkers." (AR 94, 133.)

12 Dr. Teal, in July 2010, assessed a mild limitation in social functioning. (AR 375.) He
13 noted plaintiff had "panic attacks sometimes when riding/driving[]" and, in the narrative
14 portion of the form, reflected plaintiff's report that her last full blown panic attack was two
15 months prior, that she can usually "prevent" such attacks by "recognizing symptoms early and
16 avoiding driving or riding in a car[.]" and that plaintiff denied any other anxiety symptoms.
17 (AR 376, 378.) However, in February 2011, Dr. Teal assessed a moderate limitation in
18 maintaining appropriate conduct in public contacts, and mild limitation with limited public
19 contacts. (AR 552.) He again described plaintiff's "[o]ccasional panic while driving/riding
20 (AR 553), and also noted inconsistent information regarding plaintiff's alcohol use, stating:
21 "May be consuming more than self reporting." (AR 561.) Also, in both July 2010 and
22 February 2011, Dr. Teal acknowledged plaintiff's reports of chronic pain and observed that her

01 disability or limitations were “primarily physical.” (AR 376-78, 551-53.)

02 Finally, in December 2011, Dr. Johansen noted plaintiff’s report of a long history of
03 anxiety, major panic attacks while driving, and anxiety symptoms with less intensity, and
04 opined that “anxiety symptoms markedly impede her ability to maintain appropriate behavior,
05 particularly in public or limited public environments.” (AR 592-93). He found plaintiff’s
06 prognosis guarded “due to medical condition, physical limitations, and persistent pain[,]” and
07 that, while “[r]easonable improvement can be expected with treating anxiety and depression, . .
08 . her global capacity for employment will not likely improve substantively.” (AR 594.)

09 The parties agree that the ALJ was required to provide clear and convincing reasons for
10 rejecting the uncontradicted medical opinion evidence that plaintiff was limited in her ability to
11 tolerate public contacts. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). The ALJ
12 assessed the opinion evidence as described below.

13 The ALJ accorded “less weight” to the assessed moderate limitation in social
14 functioning by Drs. Fitterer and Gardner. (AR 38.) He explained:

15 In the narrative, which carries significantly more weight, Dr. Fitterer indicated
16 that the claimant’s subjective experience of pain and intermittent psychological
17 issues will periodically affect her ability to relate appropriately with the general
18 public and coworkers. The undersigned does not find this tantamount to being
19 a significant functional limitation. Moreover, the claimant did not show
20 significant social difficulties during the course of treatment or on exam. While
21 she was noted to be tearful and/or anxious during mental status exams, she was
22 able to cooperate and complete evaluations. Further, the claimant did not
present as tearful or anxious during other medical appointments.

20 (*Id.*, internal citations to record omitted.)

21 The ALJ likewise accorded “less weight” to Dr. Teal’s February 2011 finding of a
22 moderate limitation in relation to public contact “given the claimant’s alcohol abuse at the

01 time.” (*Id.*) He noted Dr. Teal’s observation that “alcohol use could exacerbate all
02 symptoms, which are all worse since resuming alcohol use[.]” (*Id.* and AR 552.)

03 The ALJ gave “little weight” to the relevant opinions of Dr. Johansen. (AR 39.) He
04 stated:

05 At the time of the evaluation, the claimant was not engaged in any form of
06 mental health treatment, including medication management and counseling.
07 The claimant reported that she had stopped taking medications for several
08 months. Moreover, the psychologist likely relied on the claimant’s self-report
09 of which there are credibility concerns. The claimant was less than candid with
10 Dr. Johansen about her alcohol history. On that occasion, the claimant told the
11 psychologist that she had last consumed alcohol 2 years earlier.

12 (AR 39, internal citations to record omitted.)

13 The ALJ also included observations in the credibility assessment relevant to his
14 consideration of the medical opinion evidence. For example, in pointing to mental evaluation
15 evidence, the ALJ noted plaintiff’s cooperative and appropriate behavior on some occasions,
16 and on other occasions that plaintiff was tearful or had a “rigid/tense” presentation with
17 “‘marked’ signs of anxiety and depression.” (AR 36.) He pointed to evidence of decreased
18 panic symptoms and greatly improved mood with medication, and evidence of poorly
19 controlled anxiety and failure to follow prescribed treatment. (*Id.*) Also, with respect to
20 alcohol, the ALJ stated:

21 Inconsistent statements by the claimant concerning her alcohol use raise another
22 significant credibility concern. The claimant provided varied accounts of when
she last consumed alcohol. For example, during a 2012 mental intake
assessment, the claimant said she last used alcohol in 2009. Yet, in 2011, the
claimant tested positive for alcohol. During that time, the claimant insisted that
she had not been using alcohol. However, treating rheumatologist, Daniel
Sager, M.D., questioned whether the claimant had alcohol on her breath during
an [sic] medical visit. Moreover, during a mental health evaluation in 2010, the
claimant reported that she had been clean and sober for almost 3 years. Yet,

01 just a week earlier, the claimant admitted that she used alcohol quite heavily on
02 the weekends. Examining psychologist Jeff Teal, Ph.D., reported that the
03 claimant had given inconsistent reports regarding alcohol use, stating that she
04 may be consuming more than self-reporting. Such inconsistencies put the
05 claimant's general veracity into question and weaken the reliability of her
06 self-report.

07 (AR 37, internal citations to record omitted.)

08 The Commissioner concedes error in the ALJ's reliance, in part, on plaintiff's alcohol
09 abuse to discount the effects of her symptoms. She points to the Ninth Circuit's decision in
10 *Bustamante v. Massanari*, 262 F.3d 949, 955 (9th Cir. 2001), which requires an ALJ to, first,
11 identify disability under the five-step procedure and, second, conduct a drug abuse and
12 alcoholism (DAA) analysis to determine whether substance abuse was material to disability.
13 The Commissioner maintains any error was harmless, in that it did not prejudice plaintiff's
14 claim, *Stout v. Commissioner, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006), and that
15 the decision retains the support of substantial evidence, *Carmickle v. Commissioner, Soc. Sec.*
16 *Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008). The Commissioner notes that the ALJ earlier
17 cited plaintiff's inconsistent statements about her alcohol abuse – to be distinguished from any
18 effects of the abuse itself – as evidence that her self-reports were likely to be misleading. She
19 argues it follows that any medical opinion relying on such misleading reports could not be
20 entirely accurate, and that the ALJ would have reached the same conclusion even without citing
21 the effects of alcohol as a reason to doubt the intensity of plaintiff's symptoms. The
22 Commissioner otherwise argues only that plaintiff's interpretation of the medical evidence is
insufficient to justify overturning the ALJ's decision, noting the ALJ is the "final arbitrator" in
resolving medical evidence ambiguities. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.

01 2008).

02 A claimant is not entitled to disability benefits “if alcoholism or drug addiction would .
03 . . be a contributing factor material to the Commissioner’s determination that the individual is
04 disabled.” 42 U.S.C. § 423(d)(2)(C). Therefore, where relevant, an ALJ must conduct a
05 DAA analysis and determine whether a claimant’s disabling limitations remain absent the use
06 of drugs or alcohol. 20 C.F.R. §§ 404.1535, 416.935. As stated above, the ALJ must, first,
07 identify disability under the five-step procedure and, second, conduct a DAA analysis to
08 determine whether substance abuse was material to disability. *Bustamante*, 262 F.3d at 955.
09 “If the remaining limitations would still be disabling, then the claimant’s drug addiction or
10 alcoholism is not a contributing factor material to his disability. If the remaining limitations
11 would not be disabling, then the claimant’s substance abuse is material and benefits must be
12 denied.” *Parra v. Astrue*, 481 F.3d 742, 747-48 (9th Cir. 2007).

13 The ALJ in this case found alcohol abuse a severe impairment. He went on to consider
14 plaintiff’s impairments with consideration of the impact of her substance abuse, according less
15 weight to Dr. Teal’s opinion given that abuse, and rejecting Dr. Johansen’s opinion, in part,
16 given plaintiff’s failure to be fully candid regarding her alcohol history. The ALJ, therefore,
17 erred by failing to first separate out the impact of plaintiff’s alcohol abuse. *Bustamante*, 262
18 F.3d at 955. The Commissioner correctly notes that an ALJ may properly discount a plaintiff’s
19 testimony based on a lack of truthfulness about substance use, *Verduzco v. Apfel*, 188 F.3d
20 1087, 1090 (9th Cir. 1999), and may discount a physician’s opinion based on a claimant’s less
21 than credible statements, *Bray v. Comm’r of SSA*, 554 F.3d 1219, 1228 (9th Cir. 2009).
22 However, in this case, the ALJ’s muddled consideration of plaintiff’s alcohol abuse prevents a

01 clear finding that the ALJ's error was harmless.⁴

02 The Court further questions whether the ALJ otherwise provided clear and convincing
03 reasons for finding an absence of any social limitations. The ALJ concluded the opinions of
04 Drs. Fitterer and Gardner that plaintiff's pain and intermittent psychological issues would
05 "periodically affect ability to relate appropriately with the general public and coworkers[]" (AR
06 94) was not "tantamount to being a significant functional limitation." (AR 38.) This
07 statement is conclusory and would have, at the least, benefited from additional discussion. In
08 addition, while the ALJ may have appropriately considered plaintiff's presentation during
09 medical evaluations and appointments as a relevant factor in the analysis, it remains that,
10 despite that presentation, all of the physicians found plaintiff limited in regard to social
11 functioning to some degree.

12 Moreover, while the ALJ may have reasonably rejected a total limitation on interaction
13 with the public, he does not provide substantial evidence support for rejecting a lesser degree of
14 limitation, such as a limitation to only occasional, superficial, and/or infrequent contact. For
15 example, the report from Drs. Fitterer and Gardner could arguably be read to support an ability
16 to interact with others on "a superficial level" (AR 90, 116), while Dr. Teal assessed only a mild
17 limitation with limited public contacts (AR 552). Further, while the VE testified a complete
18 inability to interact with the public would eliminate any jobs at step five, it is not clear his
19 testimony would support such a conclusion with consideration of a lesser degree of limitation.
20 For example, while he was not proffered a specific hypothetical and did not provide any

21 4 Among other arguments raised, plaintiff avers the record does not show affirmative evidence
22 of alcohol use after January 20, 2011. (Dkt. 12 at 9 (citing AR 567, 574).) However, plaintiff testified
in the April 19, 2012 hearing that she last drank three months prior to the hearing. (AR 67.)

01 definitive job numbers, the VE mentioned jobs involving interaction “at least by phone[,]” and
02 possible jobs with minimal or infrequent contact with the public. (AR 70-73.)

03 In sum, plaintiff demonstrates reversible error in the consideration of the medical
04 opinion evidence, implicating both the RFC assessment and the hypothetical proffered to the
05 VE. Further, the error demonstrated at step four raises a question as to the ALJ’s earlier
06 consideration of plaintiff’s degree of limitation in relation to social functioning. This matter
07 is, therefore, subject to a remand.

08 Remand

09 The Court has discretion to remand for further proceedings or to award benefits. *See*
10 *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may direct an award of
11 benefits where “the record has been fully developed and further administrative proceedings
12 would serve no useful purpose.” *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir.
13 2002).

14 Such a circumstance arises when: (1) the ALJ has failed to provide legally
15 sufficient reasons for rejecting the claimant’s evidence; (2) there are no
16 outstanding issues that must be resolved before a determination of disability can
be made; and (3) it is clear from the record that the ALJ would be required to
find the claimant disabled if he considered the claimant’s evidence.

17 *Id.* at 1076-77.

18 Plaintiff argues that, because all of the medical source evidence supports a finding of
19 limited contact with the public and there are no jobs allowing for that limitation in conjunction
20 with the assessed hand limitation, no useful purpose would be served by additional
21 proceedings. However, as stated above, the ALJ found and the VE testified as to a limitation
22 on *any* contact with the public, not a limitation to some lesser degree of or limited public

01 contact. As also stated above, the VE's testimony does not clearly preclude a finding of a
02 significant number of jobs at step five with some modified degree of limitation on public
03 interaction. Also, as the Commissioner observes, an ALJ has not yet considered whether
04 plaintiff's alcohol abuse is a contributing factor material to the determination of disability.

05 The issue of the degree of limitation on public contact and the absence of a proper DAA
06 analysis are outstanding issues that must be resolved and, given those outstanding issues, it
07 cannot be said that the ALJ would be required to find plaintiff disabled if he considered the
08 evidence. Accordingly, this matter should be remanded for further administrative
09 proceedings.

10 **CONCLUSION**

11 For the reasons set forth above, this matter should be REMANDED for further
12 administrative proceedings.

13 DATED this 12th day of June, 2013.

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16 Mary Alice Theiler
17 United States Magistrate Judge
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